

Ordinance of the City of Jersey City, N.J.

File No. Ord. 21-066
Agenda No. 3.1 (1st Reading)
Agenda No. 4.1 (2nd Reading and Final Passage)



AN ORDINANCE TO REGULATE THE INSTALLMENT OF NEW WIRELESS UTILITY POLES AND EQUIPMENT BY AMENDING THE CODE OF THE CITY OF JERSEY CITY CHAPTER 296-STREETS, SIDEWALKS, AND PUBLIC RIGHTS-OF-WAY.

COUNCIL AS A WHOLE offered and moved adoption of the following ordinance:

WHEREAS, The City of Jersey City, New Jersey is aware that there is a strong desire among telecommunications companies to look for areas within municipalities for the placement of small cell wireless facilities by accessing rights-of-ways within municipalities; and

WHEREAS, Ordinance 10-174 was enacted on June 9, 2010 (codified in Section 345-60 of the Code) to oversee the placement of wireless communication antennas and wireless telecommunication towers on private property; and

WHEREAS, the stated objective of Ordinance 10-174 is to enable the location within the City of Jersey City of those antennas which are necessary to provide adequate wireless communication services while, at the same time, limiting the number of supporting towers to the fewest possible and minimizing the impact of the antennas, accessory equipment, and supporting structures on residences, streetscapes, and view corridors throughout the municipality; and

WHEREAS, the stated goals of Ordinance 10-174 are:

- To encourage the location of antennas upon, or within, existing structures, including existing buildings, existing wireless communication towers, existing water towers, and existing telephone and electric towers, especially those existing structures situated in non-residential districts; and
- To encourage the configuration of telecommunication facilities in a manner that minimizes and mitigates any adverse impacts upon affected properties, streetscapes, and vistas through careful design, siting, screening, landscaping, and innovative camouflaging techniques; and
- To encourage the colocation of as many antennas as possible, of as many wireless telecommunication carriers as possible, on existing towers and other structures in industrial districts; and
- To discourage the construction of new towers which do not have the likelihood of being used by a number of wireless telecommunication carriers; and
- To minimize the total number of wireless telecommunications towers within the City of Jersey City; and
- To discourage adverse impacts on scenic corridors and historic sites and districts; and

WHEREAS, due to recent developments in wireless technology, specifically the development of 5G and other technologies that involves the placement of small cells, cabinets, and equipment on existing and new utility poles in municipal rights of-ways, the City Council resolves that the principles and objectives of Ordinance 10-174 should be equally applicable to wireless equipment and new wireless utility poles located in rights-of-ways; and

WHEREAS, the rights-of-ways are municipal properties and provide a valuable resource to its citizens by permitting the public to travel freely over and across these designated properties without unreasonable encroachments or interference; and

WHEREAS, the City Council recognizes that the use of these properties must be managed carefully with the utmost consideration given to general welfare and best interest of its

APPROVED AS TO LEGAL FORM

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Business Administrator

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Corporation Counsel

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citizens; and

WHEREAS, the Federal Telecommunications Act (FTA) preserves a local government's ability to "manage the public rights-of-way...on a competitively neutral and non-discriminatory basis." (47 U.S.C. §253 (c)); and

WHEREAS, the FTA further preserves a local government's authority over the "placement construction and modification of personal wireless service facilities." (47 U.S.C. 332(c)(7)(A)); and

WHEREAS, the FTA makes it unlawful for a local government to prohibit or have the effect of prohibiting the provisions of personal wireless service (47 U.S.C. 332(c)(7)(B)(i)(II)); and

WHEREAS, the FTA provides that municipalities "shall not unreasonably discriminate among providers of functionally equivalent services" (47 U.S.C. §332(c)(7)(B)(i)(I)); and

WHEREAS with respect to health impacts, the FTA precludes the City from regulating wireless emissions or exposure except to verify that wireless facilities comply with FCC standards (47 U.S.C. §332(c)(7)(B)(iv)); and

WHEREAS, in August 2020 the 9th Circuit Court of Appeals struck down the Federal Communications Commission's restrictions on municipal regulation of wireless pole aesthetics so long as the regulations are technically feasible and reasonably directed to remedy aesthetic harms (City of Portland v. U.S., 969 F.3d 1020); and

WHEREAS, pursuant to N.J.S.A. 48:3-19 and N.J.S.A. 48:17-10 New Jersey municipalities must give consent before wireless infrastructure can be placed on existing poles or new poles erected within public rights-of-ways; and

WHEREAS, the City Council is committed to ensuring the safety of its citizens and preserving the aesthetic quality of its city and shall follow FCC regulations and court precedent which allows municipalities to impose aesthetic restrictions on wireless infrastructure which are: 1) reasonable; and 2) technically feasible; and

WHEREAS, the City Council may impose such regulations on related infrastructure including but not limited to small cells, poles, antennas, and cabinets located on municipal rights-of-ways; and

WHEREAS, the City Council has determined that it is necessary to set forth clear standards in relation to the positioning and design of wireless poles, cabinets, antennas, and other related equipment for the benefit of its citizens and any utilities that use or seek to make use of City Of Jersey City's rights-of-ways; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City Of Jersey City that the City Of Jersey City Municipal Code be amended as follows:

Chapter 296 STREETS, SIDEWALKS AND PUBLIC RIGHTS-OF-WAY is hereby amended as follows:

ARTICLE IX - Rights-of-Ways For Wireless Telecommunications.

§ 296-9.1. - Definitions.

A. Purpose.

It is the intent of this subsection to regulate the placement of telecommunications equipment, including poles, towers, antennas, and other infrastructure located on municipal rights-of-ways:

B. Definitions.

The following terms used in this subsection shall have the following meanings:

5G – Cellular technologies and its successors that deliver faster speeds, low latency broadband services and which require more infrastructure than its predecessors.

ADMINISTRATIVE REVIEW TEAM – The Division of Engineering, Traffic, and Transportation, the Division of City Planning, and the Historic Preservation Office (Historic).

CABINET – Small box-like or rectangular structures used to facilitate utility or wireless service from within the municipal right-of-way.

COLOCATION – Use of a common wireless telecommunication tower or a common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or

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placement or a wireless telecommunication tower on a structure owned or operated by a utility or other public entity.

FACILITIES - Underground Conduit, Utility Poles, Wiring, Cabinets, Footings and Street Light Fixtures.

POLE or WIRELESS POLE – Column or post located within the municipality’s right-of-way upon which telecommunications equipment may be mounted for the purpose of providing personal wireless services as defined by federal law.

POLE MOUNTED ANTENNA – A device that is attached to a pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells and outside distributed antennas.

PUBLIC RIGHT-OF-WAY – The area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, Sidewalks, spaces, Streets, either paved or constructed or not, including Paper Streets, and ways within the City, as they now exist or hereafter will exist and which are or will be dedicated or expressly reserved for the use of vehicular, Pedestrian, or bicycle traffic and other allowable modes of transportation, and/or utilities and which shall be under the Permitting jurisdiction of the Division.

RIGHT-OF-WAY AGREEMENT – An agreement that sets forth the terms and conditions for use of the municipal right-of-way and includes, but is not limited to, municipal franchise agreements.

RIGHT-OF-WAY PERMIT – An approval from the municipality setting forth the applicant’s compliance with the requirements of this Ordinance.

SMALL CELL EQUIPMENT – Wireless facilities and transmission media including, but not limited to, femtocells, picocells and microcells.

SMALL CELL FACILITY – Any structure or device used for the purpose of providing, supporting, enabling or otherwise facilitating wireless telecommunications, including but not limited to cabinets, pole mounted antenna, small cell equipment, and wireless poles, as defined herein.

C. AGREEMENTS.

1. No person or entity shall operate or place a wireless pole, pole mounted antenna, small cell equipment, or small cell facility within the municipal right-of-way without first entering into a right-of-way agreement pursuant to the provisions of this section.

2. The term of said right-of-way agreement shall include, at a minimum:

- a. A term not to exceed fifteen (15) years;
- b. Insurance requirements consistent with current standards;
- c. Designation of an individual as a point-of-contact available during business hours;
- d. Imposed fines for unauthorized installations consistent with current standards;
- e. Requirements regarding the repair, maintenance, relocation, and removal of the equipment;
- f. A reference to the siting standards set forth in this section;
- g. Requirements regarding 72 hours notification prior to the start of construction to property owners within 200 feet of each installation regarding the exact location of the installation, the equipment to be installed, and safety information for the equipment to be installed;
- h. Any other items which may reasonably be required.

D. RIGHT-OF-WAY PERMITS, SITING STANDARDS FOR POLES, POLE MOUNTED ANTENNAS AND CABINETS IN THE RIGHT-OF-WAY.

1. No pole, antenna or cabinet shall be installed within the municipal right-of-way without the issuance of a right-of-way permit.

2. Pole siting standards.

Any new wireless pole, pole mounted antenna, small cell equipment, or small cell facility shall:

- a. Be designed to minimize its visibility from off-site locations and shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the infrastructure into the surrounding area; and
- b. Utilize the smallest footprint possible, as measured by volume, technically feasible to achieve a network objective; and
- c. Be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure; and
- d. Shall be screened from public view to the extent feasible; and
- e. When attached to an existing utility pole, be shrouded or screened using materials or colors found on existing structure; and
- f. Be architecturally compatible with the existing site; and
- g. Be placed at a location that would not require the removal of any required landscaping or would reduce the quantity of landscaping to a level of noncompliance with the Zoning Code; and
- h. Be no taller than 110% of the height of the poles in the surrounding streetscape, whichever is taller; and
- i. Be no closer than eighteen inches from the curb line and allow for six feet of open passage; and

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j. For sites in any residential zone, be at least two hundred linear feet from any other existing pole or proposed pole along the same side of the street or for sites in any other zone, be at least one hundred linear feet from any other existing pole or proposed pole along the same side of the street; and

k. If in a historic district of the municipality, be reviewed and approved by the Historic Preservation Office.

The Administrative Review Team shall ensure that the pole siting standards are enforced and may formulate guidelines for applicants based on these standards.

3. Ground level cabinet siting standards.

Ground level cabinets are permitted only if placement on a pole is not possible or feasible, as determined by the Administrative Review Team. No ground level cabinet shall be installed unless it:

a. Is less than sixteen cubic feet in volume; and

b. Is finished and/or painted so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties; and

c. Allows adequate room with a minimum of six (6) feet of open passage so as not to impede the public's or municipality's use of the right-of-way.

4. Pole mounted antenna siting standards.

No pole mounted antenna shall be installed unless it:

a. Does not exceed three cubic feet in volume; and

b. Is finished and/or painted and otherwise camouflaged, in conformance with best available technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties, as determined by the Administrative Review Team; and

c. Allows adequate room so as not to impede the public's or municipality's use of the right-of-way, as determined by the Administrative Review Team.

5. Pole mounted cabinets siting standards

No pole mounted cabinet shall be installed unless it:

a. Does not exceed twelve cubic feet; and

b. Is finished and/or painted and otherwise camouflaged, in conformance with best available technology methods, so as to blend in compatibly with its background and so as to minimize its visual impact on surrounding properties, as determined by the Administrative Review Team; and

c. Allows adequate room so as not to impede the public's or municipality's use of the right-of-way, as determined by the Administrative Review Team.

6. Order of Preference

In general, wireless equipment shall be installed as follows (most preferred to least preferred):

a. On existing telephone or electrical lines between existing utility poles.

b. On existing utility poles (electric poles or telephones poles).

c. On municipal service poles.

d. New wireless poles shall be the least preferred type of allowed facility.

e. Ground equipment should be minimal and the least intrusive.

7. Noise.

Applicants are required to incorporate ambient noise suppression measures and/or required to

place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations. The maximum allowable noise emitted by the Small Wireless Facility shall not exceed 30 dB measured at a distance of 3 feet from any portion of the facility.

E MISCELLANEOUS PROVISIONS.

a. Any approval received pursuant to this article shall not relieve the applicant from receiving consent from the owner of the land above or on which the applicant's facility may be located as may be required under New Jersey law.

b. The applicant must, in addition to receiving a right-of-way permit, also receive all necessary road opening permits, construction permits, and other requirements set forth in City Of Jersey City's Municipal Code or applicable state statutes.

c. The applicant shall include in their permit application a certified list of all property owners within 200 feet of each installation.

d. The Administrative Review Team shall ensure that colocation is not a feasible option before approving any new wireless pole, and the applicant shall attest and demonstrate through clear and convincing evidence in its permit application that it has pursued all reasonable attempts to colocate on existing poles and other facilities.

e. The Administrative Review Team may, in its discretion, require certification from a licensed engineer attesting to the structural integrity of any pole mounted antenna or pole mounted cabinet.

f. The Administrative Review Team may, in its discretion, require testing of the radio frequency emittance to ensure compliance with Federal Communications Commission safety standards specified in 47 CFR Rule 1.1307(b).

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- g. The applicant shall report to the Administrative Review Team any facilities that have been unused for the previous six months and shall detail a timeline for their removal within the following six months.
- h. The applicant shall be responsible for removal of any identified Facilities no longer in active use nor required for future use under their ownership and control.
- i. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- j. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- k. *This ordinance shall take effect 90 days after it's passage.*
- l. The City Clerk and the Corporation Counsel may change any chapter numbers, article numbers and section numbers if codification of this ordinance reveals a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

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RECORD OF COUNCIL VOTE ON INTRODUCTION – Sep 22 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES	AYE	

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING – Oct 14 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	8-0
PRINZ-AREY	AYE	SOLOMON	ABSENT	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	

SPEAKERS:

Yvonne Balcer

TABLED:

Motion to Amend Ord. 21-066 by Solomon, Seconded by Rivera

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY – Oct 14 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	

RECORD OF FINAL COUNCIL VOTE – Oct 14 2021						
RIDLEY	AYE	SALEH	AYE	LAVARRO	AYE	9-0
PRINZ-AREY	AYE	SOLOMON	AYE	RIVERA	AYE	
BOGGIANO	AYE	ROBINSON	AYE	WATTERMAN, PRES.	AYE	

Adopted on first reading of the Council of Jersey City, N.J. on **Sep 22 2021**

Adopted on second and final reading after hearing on **Oct 14 2021**

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on Oct 14 2021



City Clerk



Joyce E. Watterman, President of Council
Approved: Oct 14 2021

Amendment(s):

In Italics: *k. This Ordinance shall take effect 90 days after it's passage.*



Steven M. Fulop, Mayor
Date to Mayor: Oct 15 2021
Approved: Oct 15 2021

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FACT SHEET -

This summary sheet is to be attached to the front of any ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the ordinance.

Project Manager

Laura Bustamante, Council Aide - Ward E	201-547-5283	lbustamante@jcnj.org
Division		

Note: Project Manager must be available by phone during agenda meeting (Wednesday prior to council meeting @ 1:00 p.m.)

Purpose

AN ORDINANCE TO REGULATE THE INSTALLMENT OF NEW WIRELESS UTILITY POLES AND EQUIPMENT BY AMENDING THE CODE OF THE CITY OF JERSEY CITY
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Cost (Identify all sources and amounts)

NA

Contract term (include all)

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Approved by
John Metro, Acting Business Administrator

Status:
Approved - Sep 15 2021